

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X		
PAUL T. PAPADAKIS,	:	
	:	
PLAINTIFF	:	CIVIL ACTION
	:	NO.: 04-30189-MAP
VS.	:	
	:	
CSX TRANSPORTATION,	:	
	:	
DEFENDANT	:	
-----X		

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION *IN LIMINE*
TO ADMIT COLLATERAL SOURCE BENEFITS

I. Introduction

Now comes the Plaintiff in Opposition to the Defendant's Motion in Limine to Admit Evidence of the Plaintiff's Receipt of Collateral Source Benefits.

The Defendant has moved the Court for a ruling *in limine* approving the Defendant's request that it be permitted to offer evidence that the Plaintiff has received a disability annuity from the U.S. Railroad Retirement Board, as well as supplemental income benefits pursuant to a policy with the Provident Life and Accident Insurance Company, and the receipt of the dollar amount of such benefits. Notwithstanding the disfavor courts generally have for collateral source evidence. Eichel v. New York Central Railroad, 375 U.S. 253, 845.Ct. 316, 11 L.Ed 2d 307 (1963). The Defendant suggests such evidence should be allowed pursuant to "well established exception to the 'collateral source' rule" enunciated in McGrath v. Consolidated Rail Corp., 136 F.3d 838 (1st Cir 1998).

The Plaintiff respectfully says that the Defendant's Motion should be denied.

II. Argument

The general rule in FELA cases is that evidence of payments made from collateral sources to the plaintiff is not admissible. Eichel v. New York Central Railroad Co., 375 U.S. 253, 84 S. Ct 316 11 L.Ed 307 (1963).

In Eichel, the Defendant railroad argued that the receipt of such benefits while concededly inadmissible to offset or mitigate damages should be allowed "...as bearing on the extent and duration of the disability suffered by the petitioner". The Court rejected the railroads argument and held that

the likelihood of misuse by the jury clearly outweighs the value of this evidence. Insofar as the evidence bears on the issue of malingering, there will generally be other evidence having more probative value and involving less likelihood of prejudice the receipt of a disability pension." Eichel supra at 255.

This would appear to have been the end of the issue until the adoption of the Federal Rules of Evidence in 1973. Specifically, Federal Rule of Evidence 403 which vested the trial judge with authority to determine what evidence is relevant and admissible. Since the adoption of the Federal Rules of Evidence, the issue of the admissibility of Collateral Source benefits has been the subject of frequent judicial review and, notwithstanding the Defendant's claim that there is a "well established exception" to the exclusionary rule; the circuits are split on the issue. For instance the Ninth Circuit has interpreted Eichel to be a total preclusion of collateral benefits, Sheehy v. Southern Pacific Transportation Co., 631 F.2d 649 (9th Cir. 1980). The Sixth Circuit also looks unfavorably upon use of such evidence. Wilcox v. Clenchfield Railroad Company, 747 F.2d 1059 (6th Cir. 1984) as does the Tenth Circuit, Green v. Denver & Rio Grande Western Railroad Company 59 F.3d 1029 (10th Cir. 1995), *cert. denied* 516 U.S. 1009, 116 S.Ct. 565. See also, Lee v. Consolidated Rail Corporation, No. CIV.A.94-6411, 1995 WL

734108 (E.D. PA. Dec. 5, 1995). Concededly, the First Circuit has recognized that under certain circumstances the trial judge exercising the discretionary authority accorded him by Fed. R. Evid. 403 may allow the Defendant to offer evidence that the Plaintiff has received benefits pursuant to the Railroad Retirement Act or pursuant to a policy of insurance providing disability benefits McGrath v. Consolidated Rail Corporation 136 F.3d 838 (1st Cir 1998). However, before exercising that discretion, the court must consider whether admission of such evidence presents little likelihood of prejudice to the Plaintiff and whether there is no strong potential for improper use. The Plaintiff suggests that Eichel would further require that the court consider whether there is "...other evidence having more probative value and involving less likelihood of prejudice than the receipt of a disability pension." Eichel 375 U.S. at 255. According to Eichel, only after satisfied that the probative value outweighs the risk of prejudice and that the jury will not use the evidence improperly, and that there is no other more probative evidence available should the court admit the evidence. Moreover, if the evidence is admitted, then a limiting instruction is required. McGrath, 136 F.3d at 841.

The Plaintiff suggests that the Defendant's reference to a Massachusetts state case has no authority in a claim brought pursuant to Federal Statute.

Facts

The Plaintiff admits that he has received benefits pursuant to the Railroad Retirement Act and Provident Life and Accident Insurance Company. The Plaintiff further acknowledges that these benefit sources have liens that must be satisfied should the Plaintiff obtain a favorable verdict. The Plaintiff also says that the U.S. Railroad Retirement Board has awarded him a disability pension reflecting its determination that his is totally disabled from gainful employment. Report of Railroad Retirement Board, attached hereto as Exhibit A.

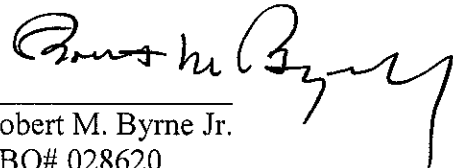
During trial the Plaintiff will offer evidence through his treating physicians that as a result of the injuries sustained on June 13, 2001 he has permanent partial impairments that limit his ability to perform work. Report of Dr. Lawrence Field, attached hereto as Exhibit B. The Plaintiff also proposes to offer the expert opinion of Leona Liberty, Ph.D., that the Plaintiff's current earning capability is limited to work with compensation ranging from \$6-\$9 per hour and limited to 25-30 hours per week. This report is dated July 13, 2004. Report of Leona Liberty, Ph.D, attached hereto as Exhibit C. This evidence was disclosed to the Defendant months ago in the form of medical records, expert reports and expert depositions. Nevertheless, the Defendant misleadingly says in support of its Motion that the Plaintiff claims a "permanent total disability" which is simply not true. Also not true is the Defendant's assertion that "...the Plaintiff's treating physicians agree with the Defendant's medical expert that the only injury, if any, he suffered as a result of the accident should have disabled him for no more than three months". As the Defendant well knows, Dr. Lawrence Field, the Plaintiff's treating physician has opined that the Plaintiff's torn annulus is causally related to the incident and the injury permanently limits his ability to lift more than fifty pounds. See Exhibit B.

The Plaintiff denies that he is a malinger. However, if counsel seeks to pursue this defense tactic there are several other alternatives more probative and less prejudicial to the Plaintiff to prove malingering. Specifically the Plaintiff chose to reject the Defendant attempts to engage him in an alternative work program, and he has not attempted to find work of the type referred to in Dr. Liberty's report. Assuming the Defendant can lay a proper foundation either or both of these facts is arguably the type of evidence Eichel says is more "probative" and involving less likelihood of prejudice."

In light of the forgoing, the Plaintiff says that upon the current records it would be

impossible for the Court to find that the need for admission of the collateral source benefits outweighs the potential that the jury may misuse it and prejudice the Plaintiff. The Plaintiff respectfully says that the Defendant's Motion In Limine for a ruling allowing the admission of disability benefits paid to the Plaintiff pursuant to the Railroad Retirement Act and/or by the Provident Life and Casualty Insurance Company should be denied.

Respectfully submitted,
Paul Papadakis
By his attorney,

A handwritten signature in black ink, appearing to read "Robert M. Byrne Jr.", written over a horizontal line.

Robert M. Byrne Jr.
BBO# 028620
Thornton & Naumes LLP
100 Summer St. 30th Fl.
Boston, MA 02110

EXHIBIT A



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

OFFICE OF PROGRAMS
ASSESSMENT AND TRAINING

November 22, 2002

Paul Papadakis
54 Carmel Lane
Feeding Hills, MA 01030

In reply refer to:
RRB NO. A-023-38-4947

Dear Mr. Papadakis:

This is to advise you that we have reconsidered our decision regarding your period of disability ("disability freeze") and early Medicare Coverage.

A disability freeze has been established in your case beginning June 14, 2001. Your case will be reviewed, and if the disability freeze increases the amount of your annuity payments you will be notified later.

You are entitled to Medicare coverage beginning December 1, 2003. You will be automatically enrolled. No action is required on your part.

Because your condition meets the Social Security Act definition of disability, all or part of the tier 1 portion of your annuity will be taxed like a social security benefit. If your period of disability could affect prior tax years, you will receive a special letter with additional information within the next 60 days.

Notify the Railroad Retirement Board (RRB) promptly if your condition improves, if you begin working for pay or become self employed regardless of the amount of your earnings, or if you are convicted of a felony. Also, notify the RRB if your doctor says that you can return to work.

Your case may be periodically reviewed to determine whether your condition remains severe enough to prevent any work activity to allow your disability freeze to continue. When your case is reviewed, we may ask you for information and evidence or to report for a medical examination.

- 2 -

If you disagree with this decision, you have the right to appeal to the Bureau of Hearings and Appeals. If an appeal is made, it must be submitted on Form HA-1 and must be received at an office of the RRB within 60 days from the date of this notice. A Form HA-1 may be obtained from any field office of the RRB or by writing directly to the Director of Hearings and Appeals at the following address: Railroad Retirement Board, Bureau of Hearings and Appeals, 844 North Rush Street, Chicago, Illinois 60611.

If you need to personally visit one of our field offices, you are urged to call for an appointment. You will not be refused service if you do not have an appointment, but Railroad Retirement Board representatives can serve you better with an appointment.

Sincerely,

David McCann
Reconsideration Specialist

cc: Field Office
Boston, MA

BE SURE TO READ THE ATTACHMENT FOR OTHER IMPORTANT INFORMATION.

MEDICAL CENTER OF EAST SPRINGFIELD, INC.

1410 CAREW STREET
SPRINGFIELD, MASSACHUSETTS 01104

MEDICAL DIRECTOR
DANIEL DRESS, M.D.

(413) 781-1812

October 12, 2002

Comprehensive Health Services
8229 Boone Boulevard
Suite 700
Vienna, VA. 22182-2623

RE: Paul Papadakis
Claim #: 023384947JA
Railroad Retirement Board

History: This 54 year old male was evaluated in my office on October 8, 2002. He complains of the following problems: #1 - back pain - he claims that he was injured at work last year and developed low back pain. Back pain radiates to the left buttock. He has pain all the time and the symptoms increase with any bending or lifting. Treatment has consisted with physical therapy and epidural injections no surgery has been advised. Medication includes Hydrocodone as needed. #2 - knee pain - patient states that he had right knee pain with tendonitis of the right knee last year. Symptoms have resolved.

Past Medical History: Hypocholesterolemia, benign prostatic hypertrophy, esophageal reflux. Medications: Zocor, Nexium, Terazosin and Hydrocodone. Family history negative for diabetes, ETOH - Zero.

Physical Examination: General - Alert, no acute distress. Vital signs - afebrile, pulse 80, respirations 16, blood pressure 116/70, weight 201 lbs. Head - normocephalic without evidence of trauma. Eyes - equal and reactive to light, extraocular movements are full. Fundi disclose no hemorrhage, exudate or papilledema. Ears - tympanic membrane intact. Mouth - dentition is good. Throat - no inflammation. Neck - supple, no thyroidmegaly or mass. Chest - clear to percussion and auscultation. Heart - regular rhythm, no gallop, murmur or rub. Abdomen - soft and non-tender, no organomegaly or mass. Back - lumbar spine - motion is as follows flexion - 70 degrees, extension - 25 degrees. Right lateral flexion - 20 degrees, Left lateral flexion 20 degrees. Neurologic exam - deep tendon reflexes are 2+ in the upper and lower extremities. Motor exam - strength testing is full in the arms and legs. Sensory exam - pin sense is intact in the upper and lower extremities. Gait is in normal limits.

Page 2

RE: Paul Papadakis
Claim #: 023384947JA

Assessment: Back pain - I believe that this patient has limitations
with moderate lifting.

Sincerely,



Daniel Dress, M.D.

DD/rg

THE ORIGINAL SIGNEL
BY THE ABOVE DOCTOR

EXHIBIT B



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
 408 ATLANTIC AVENUE, ROOM 441
 PO BOX 2448
 BOSTON, MASSACHUSETTS 02208-2448
 E-MAIL: boston@rrb.gov

MEDICAL ASSESSMENT OF RESIDUAL FUNCTIONAL CAPACITY

NAME Paul Papadakis	RRB CLAIM NUMBER 023-38-4947
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INSTRUCTIONS

Complete this form and submit to us along with your narrative report and office records, as requested on Form G-250. Describe below any restrictions in the claimant's ability to perform basic work-related functions within a regular work setting on a day-to-day basis. **Relate any assessed reduction to capacity to particular medical findings.** Do not consider non-medical factors such as age, sex, education, or work experience.

Note: You may include this medical assessment in your narrative report, however, we prefer you use this Form G-250a.

When using this form, use the space to the left of a function or condition to enter "NA" if you find that it is NOT AFFECTED by the claimant's impairment(s). If you are unable to assess the claimant's ability to perform an activity or tolerate a condition shown, use the space to show "UNK" indicating UNKNOWN. Otherwise, complete as appropriate, being sure to explain limitations and relate them to specific findings in the space provided.

Please read page 4 for the authorization for this report and other important notices.

A. Exertional Restrictions - For all claimants with physical impairments.

1. In an 8-hour workday claimant can STAND and/or WALK, with normal breaks, for:

☒ less than 2 hours total

☐ at least 2 hours total

☐ 6 hours or more

MEDICAL FINDINGS TO SUPPORT RESTRICTION:

Chronic low back pain secondary
 to T12-L4-L5 disc

2. In an 8-hour workday claimant can SIT, with normal breaks, for:

☒ less than 6 hours total

☐ 6 hours or more

MEDICAL FINDINGS TO SUPPORT RESTRICTION:

Same as #1

BOSTON, MA 00 NOV 12 2002

Paul Papadakis

023-38-4947

Exertional Restrictions, Continued

3. Claimant can LIFT:

	Unlimited	Frequently ¹	Occasionally ²	Never
Less than 10 pounds	Λ	Λ	Λ	Λ
10 pounds	Λ	Λ	Λ	Λ
20 pounds	Λ	Λ	Λ	Λ
50 pounds	Λ	Λ	Λ	Λ
100 pounds or more	Λ	Λ	Λ	Λ

MEDICAL FINDINGS TO SUPPORT RESTRICTIONS:

4. Claimant is able to:

	Frequently ¹	Occasionally ²	Never
_____ Bend/Stoop	Λ	Λ	Λ
_____ Crouch/Squat	Λ	Λ	Λ
_____ Climb	Λ	Λ	Λ
_____ Reach above shoulder level	Λ	Λ	Λ

MEDICAL FINDINGS TO SUPPORT RESTRICTIONS:

5. Claimant can use BOTH HANDS for repetitive:

	YES	NO (Limitation MUST be explained)
_____ Simple Grasping	Λ	Λ
_____ Fine Manipulation	Λ	Λ
_____ Pushing/Pulling	Λ	Λ No 1. H > 10 lb

6. Claimant can use BOTH FEET for repetitive:

	YES	NO
_____ Foot Controls	Λ	Λ

7. Claimant can, without restriction:

	YES	NO
_____ See	Λ	Λ
_____ Hear	Λ	Λ
_____ Speak	Λ	Λ

MEDICAL FINDINGS TO SUPPORT RESTRICTIONS:¹ **FREQUENTLY** means occurring one-third to two-thirds of an 8-hour workday; cumulative, not continuous.² **OCCASIONALLY** means occurring from very little up to one-third of an 8-hour workday; cumulative, not continuous.

Paul Papadakis

023-38-4947

B. Environmental Restrictions - For all claimants, as applicable.

Claimant is restricted in activities including:	No	Mildly ³	Moderately ⁴	Totally
_____ Unprotected Heights	^	^	^	^
_____ Driving/Operating Machinery	^	^	^	^
_____ Being around moving Machinery	^	^	^	^
_____ Uneven Terrain/Stairs	^	^	^	^
_____ Exposure to Dust, Fumes, Etc.	^	^	^	^
_____ Exposure to Noise	^	^	^	^
_____ Exposure to Vibration	^	^	^	^
_____ Exposure to Temperature Extremes/Humidity	^	^	^	^
Other:				

MEDICAL FINDINGS TO SUPPORT RESTRICTIONS:**C. Mental Restrictions** - For all claimants with mental impairments.

N/A No eval for this

Claimant is limited in ability to:	No	Mildly ³	Moderately ⁴	Totally
_____ Reason/Use Judgment	^	^	^	^
_____ Maintain Appropriate Mood	^	^	^	^
_____ Maintain Personal Habits	^	^	^	^
_____ Perform Normal Daily Activities	^	^	^	^
_____ Make Social Adjustments	^	^	^	^
_____ Relate to Other People	^ ^	^	^	
_____ Make Occupational Adjustments	^	^	^	^
_____ Maintain Normal Work Pace	^	^	^	^
_____ Maintain Normal Concentration	^	^	^	^
_____ Remember/Understand/Carry Out Instructions	^	^	^	^
Other:		^	^	^

MEDICAL FINDINGS TO SUPPORT RESTRICTIONS:³ Mildly means tolerance/ability to function is limited but satisfactory.⁴ Moderately means tolerance/ability to function is seriously limited, but not precluded.

Paul Papadakis**023-38-4947**In your opinion, is the claimant able to handle benefit
payments in his/her own best interest

Yes

^

No

^

Signature

Date

Phone Number with area code

Printed Name, Title, and Address

Lawrence H. Field, M.D.
780 Chestnut Street
Springfield, MA 01107

10/31/02

(413) 846 4330

Please return this form along with your narrative report and copies of your office records to:

RAILROAD RETIREMENT BOARD

408 ATLANTIC AVENUE, ROOM 441

PO Box 2448

BOSTON, MASSACHUSETTS 02208-2448

E-MAIL: boston@rrb.gov

PHONE NUMBER : (617) 223-8550

FACSIMILE NUMBER : (617) 223-8551

PRIVACY ACT AND PAPERWORK REDUCTION NOTICE

The information requested on this form is authorized by Section 7(b)(6) of the Railroad Retirement Act. While you are not required to respond, your cooperation is needed to provide information necessary to complete processing for the claimant named and to determine the claimant's entitlement to disability benefits under the Railroad Retirement Act.

We estimate this form takes an average of 20 minutes per response to complete, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number. If you wish, send comments regarding the accuracy of our estimate or any other aspects of this form, including suggestions for reducing completion time, to Chief of Information Management, Railroad Retirement Board, 844 N. Rush Street, Chicago, IL 60611-2092.

Lawrence H. Field, M.D., F.A.A.P.M.R.

Physical Medicine & Rehabilitation

Board Certified

780 Chestnut Street
Springfield, MA 01107-1610

Tel. (413) 846-4330
Fax (413) 846-4332

November 5, 2002

Railroad Retirement Board
408 Atlantic Avenue
Room 441
P.O. Box 2448
Boston, MA 02208-2448

Re: Paul Papadakis
023384947

To Whom It May Concern,

Mr. Papadakis was a 53 year old male who was initially evaluated in my office on 6/28/01. He incurred sudden low back pain when bending over on 6/13/01 while performing his usual work responsibilities on the railroad.

A subsequent work-up with an MRI scan performed on 7/07/01 did reveal a small central annulus tear of the L4-5 disc. There was also bilateral neural foraminal narrowing with compression of both L4 nerve roots. These factors contributed to ongoing chronic low back pain. He was evaluated by a neurosurgeon as well as an orthopedic surgeon. No surgery was indicated. His final diagnosis is as follows.

1. Torn L4-5 disc.
2. Myoligamentous lumbosacral strain.
3. L4 nerve root compression.

He has been on several different medications including narcotic pain relievers which were most recently refilled from my office on 7/25/02. He underwent a long course of physical therapy. This therapy was from June 2001 through August 2001. This was unsuccessful. He went for epidural cortisone injections with no significant relief.

BOSTON, MA 02 NOV - 7 2002

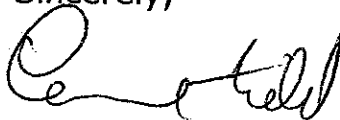
Re: Paul Papadakis
Page 2

November 5, 2002

My prognosis for full recovery is guarded.

If you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Field", written in a cursive style.

Lawrence H. Field, M.D.

LHF/mm

EXHIBIT C

CAPABILITIES EVALUATION CENTER

EMPLOYMENT ANALYSIS — LIFE CARE PLANNING

120 DEFREEST DRIVE
RENSSELAER TECHNOLOGY PARK
TROY, NY 12180-7608

PHONE: 518.283.7148
FAX: 518.283.7168
EMAIL: T20@msn.com

July 13, 2004

Robert Byrne, Jr
Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, MA 02110

EMPLOYABILITY & REHABILITATION ANALYSIS

Name of Injured Party: Paul T. Papadakis
Date of Birth 02/04/1948
Date of Accident: 06/13/2001
Your File #: v. CSX
Our File #: B2398-3409

PURPOSE of REPORT

The purpose of this report is to determine the employability potential and rehabilitation needs of Paul T. Papadakis, and identify vocational alternatives (if any), for his return to gainful employment.

METHOD

Information and evidence to draw conclusions were obtained, in part, by reviewing the following records or other documents:

Medical reports:

Dr. Carrington
Dr. Cowan; New England Orthopedic Surgeons
Dr. Field
Dr. Kaye; Valley Neurological Surgery
Dr. Khayata; Lahey Clinic
Dr. McGuire; Baystate Medical Center
Dr. Pfeifer, Lahey Clinic
Baystate MRI & Imaging Center
Baystate Pain Management Center
Mercy Medical Center
Springfield Anesthesia
Stop & Shop Pharmacy

In addition Mr. Papadakis participated in a Vocational Evaluation on 4/12/2004, where a face to face interview was conducted and vocational tests were administered.

BACKGROUND AND HISTORY

Paul T. Papadakis is a 56 year old married individual. He is right-handed and wears corrective lenses. He resides with his spouse at 54 Carmel Lane, Feeding Hills, MA 01030. He has two adult children who live independently. He receives disability retirement benefits from his past employer. He has a valid driver's license, but will take a Valium before driving, due to anxiety and other problems.

EDUCATION & VOCATIONAL TRAINING

Mr. Papadakis graduated from a high school in Springfield, MA, in 1965. He indicated English and History were his favorite or best subjects while his least favorite class was math. He subsequently attended Holyoke Community College, but dropped out in his sophomore year, due to lack of academic interest. Vocational training includes having taken various classes and other training through the railroad or through his union. He served in the US Naval Reserve in the active status for about six months and in the inactive status for one year. He received an early honorable discharge, due to experiencing anxiety when having to travel. He has basic computer literacy and familiarity with the keyboard.

MEDICAL

Mr. Papadakis sustained serious injuries on June 13, 2001 when working for CSX as a railroad track inspector. At the time of the incident he was unable to raise the railroad truck with wheels off the track and had to place a block under the wheel, twisting his back and suffering severe musculoskeletal spasm. An MRI scan revealed a torn L4-5 disc with bulges at L1 through S1 levels. Surgery has not been recommended. Rather doctors have suggested he undergo IDET treatments. However he reported his insurance carrier has not approved this procedure and he lacks the funds for self-pay.

Mr. Papadakis indicated he suffers from low back and leg pain. He experiences chronic burning pain in the center of his lower back, at L4-5, and sharp pain in the sacroiliac joint on the left side. He is weather sensitive and more symptomatic when it is cold or rainy. He was treated with two series of epidural injections into the sacroiliac joint on August 30, 2001 and October 15, 2001 and found this to be so painful that he never returned to the pain clinic.

Mr. Papadakis wears a back brace for support when attempting an activity such as gardening. He finds lying down helps relieve pain, while prolonged sitting or standing in one place aggravates his condition. He sleeps with a pillow between his legs, and his knees drawn up. He has been prescribed Vicodin for pain and Xanax for anxiety and sleep.

Mr. Papadakis sees a massage therapy monthly, as he finds this helps with muscle spasms. These treatments are not covered by his insurance. As a result he must pay \$ 45 per session out of his own money.

Other medical history includes work related injuries to his wrist and being diagnosed as suffering from bilateral carpal tunnel syndrome for which he underwent surgery in 1997. He was out of work about three months for what was referred to as an occupational hazard. He reported he

occasionally experiences numbness in his right hand and fingers, but not of a disabling nature. He has some hearing loss, more on the left, with tinnitus, and finds background noise can be distracting. He has been diagnosed with diverticulosis, anemia, and reflux and controls symptoms through diet.

HOBBIES or DAILY ROUTINE, PRE-POST INJURY

Mr. Papadakis reported he has good and bad days, and when he does not feel well he does little. On good days he sometimes goes to the library to take out books about WWII, as he enjoys reading fiction books about this topic. He likes gardening and watching sports and sometimes goes to the park to see games. He lives close to his elderly parents and visits them frequently. He has a treadmill that he uses on the average twice a week. Prior to the accident he had enjoyed golf and deep sea fishing, and was active in the Elks Lodge and other activities.

NEED FOR HOME MAINTENANCE ASSISTANCE

Mr. Papadakis has limitations for doing heavy chores around his home. Consequently he might need to hire others to do some of the work he would have ordinarily done pre-injury. A conservative estimate for this need ranges from ten to twenty-five percent. A professional economist could translate this into an economic or financial cost.

EMPLOYMENT HISTORY

Mr. Papadakis worked for CSX, previously known as ConRail and Penn Central, since 1969, or for about 31 years. He was initially hired as a trackman, received on the job training, then moved on to more complex positions. His job at the time of the accident was as a railroad track inspector. Job duties included inspecting about 54 miles of the track for broken rail, sagging joints, malfunctioning switches, or other problems. He worked alone and liked the independence of his job. He also reported he enjoyed working with his hands.

ANALYSIS OF PRIOR EMPLOYMENT

The U.S. Department of Labor has described a classification system that identifies work by exertional level to perform specific jobs. There are five exertional levels, ranging from the most physically demanding classification of Very Heavy to the least physically demanding classification of Sedentary, as follows:

Very Heavy work involves exerting in excess of 100 pounds of force occasionally, up to 1/3 of a workday; 50 pounds of force frequently, 1/3 to 2/3 of the workday; or 20 pounds of force constantly, 2/3 or more of the workday, to move objects.

Heavy work involves exerting 50 to 100 pounds of force occasionally, 25 to 50 pounds of force frequently, and up to 20 pounds of force constantly to move objects.

Medium work involves exerting 20 to 50 pounds of force occasionally, 10 to 25 pounds of force frequently, or up to 10 pounds of force constantly to move objects.

Light work involves exerting up to 20 pounds of force occasionally, or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. If the weight is negligible

walking or standing to a significant degree, or sitting most of the time, but with pushing or pulling of arm or leg controls, or working at a production pace entailing constant pushing or pulling of materials could be required.

Sedentary work involves exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects. Sitting most of the time, with walking and standing occasionally could also be required.

In a similar fashion, occupations are assigned a skill level, from one to nine, referred to as the Specific Vocational Preparation, SVP, needed to perform a job in a competent manner, where the higher the SVP, the more skilled the position. This information is typically organized by ranking a particular job title as Skilled, Semiskilled, and Unskilled.

Mr. Papadakis' past job according to the above criteria is referred to as a Track Repairer, # 910.684-014. This type of work is considered semiskilled, level 4, heavy employment.

Mr. Papadakis has been seen by several physicians and has undergone various treatments. Dr. Field opined in his report to the Railroad Retirement Board on November 5, 2002 that Mr. Papadakis' prognosis for full recovery is guarded.

Hence it could be concluded that Mr. Papadakis lacks the wherewithal to resume his prior job. As a result he will have to seek a new career.

TRANSFERABLE SKILLS

Transferable skills are skills an individual possesses, either natural, acquired or residual (following disability), through work, training, education, hobbies, or general life experiences, that could be used for various vocational possibilities. Mr. Papadakis did not acquire any skills he could transfer to jobs outside the railroad industry. Consequently training for a new career with assistance for locating a future employer might be required.

PARENTS/SIBLINGS OCCUPATIONS

Mr. Papadakis father continues to work at 82 years old as a maintenance supervisor. His mother, also in her 80's, is a homemaker. His sister works in a doctor's office. His adult daughter is a singer; his son's career is a boiler maker.

RESULTS OF VOCATIONAL TESTING

A battery of vocationally related tests was provided to Mr. Papadakis on 4/12/2004. The purpose of this assessment was to identify skills, aptitudes or interests for future employment. The following chart depicts the variety of standardized tests administered to him. An analysis and discussion follow.

Test	Norm Referenced	General
WRAT - Arithmetic	117 Standard Score	High Average
WRAT - Reading	113 Standard Score	High Average
ORAL DIRECTIONS	66%ile	Above Average
GATES-MacGINITIE Vocabulary	>12th Grade	Above Average
EMPLOYEE APTITUDE Clerical	90%ile	Above Average
REVISED BETA	114	High Average
ETCH-A-SKETCH w/OVERLAY (Time & Accuracy)	11 minutes, 5 errors	Below Average
BASIC INFORMATION	98%ile	Above Average
SELF DIRECTED SEARCH	Realistic, Investigative, Enterprising	
VOCATIONAL PREFERENCE	Investigative, Artistic, Realistic	

SKILLS ANALYSIS AND DISCUSSION

Mr. Papadakis arrived early for his appointment. He worked in a cooperative fashion on all assignments presented to him throughout the approximate four hours that comprised the evaluation. He stood up several times during this interim to stretch or take a short break. Behavioral observations included that he demonstrated good interpersonal and conversational skills. He implied he misses working and being productive. Furthermore he indicated that when and if able he would like to volunteer at either the Red Cross or the library, as he realizes it unlikely that he could return to his job at the railroad.

Mr. Papadakis described himself as having strong values for following through with any commitment he makes. Consequently it could be assumed he takes pride being a reliable worker, a criteria supported by his long tenure with one employer.

The results of testing found strengths in all academic and vocational areas that were tested. That is, Mr. Papadakis demonstrated proficiencies for solving language and math problems, and for applying general logic to solve problems. Too, his score on the Oral Directions test indicated he listens well and that his loss of hearing is not at a debilitating or handicapping level. Moreover he developed a strategy for working in an efficient and accurate manner. Overall his test scores imply he likely was a valuable employee who had the potential to think and plan before acting.

One hands-on fine motor assignment was administered to Mr. Papadakis. He worked slowly on this task, but traced the maze with precision and neatness. Consequently his below average score is not representative of poor eye-hand coordination. Rather his score was a function of working in a deliberate or careful fashion, a value that further supports him to be a valuable worker.

Two interest inventories were administered to Mr. Papadakis to learn career interests. The results of both tests were consistent for occupations classified as Realistic, i.e., working with tools or machines, or with one's hands, and Investigative, occupations that require research and inquiry. As this is descriptive of his past job Mr. Papadakis likely has an understanding of the types of employment that have the potential to provide him satisfaction. This is important, as workers who

are satisfied with their job have longer tenure and may be more productive than workers who are lack intrinsic satisfaction. Additionally these results further support that Mr. Papadakis' past employment with the railroad was a good match for him, and reinforces the belief that he would have remained with the railroad until the typical retirement age customary in this occupation, or in his union.

The conclusion to the vocational testing includes that Mr. Papadakis possesses a variety of skills and aptitudes that could be utilized for employment. However he has no work experiences outside the railroad and thus would require training to access a job that commensurate with his potential.

FUNCTIONAL LIMITATIONS FOR EMPLOYMENT

Functional Limitations for employment are restrictions that prevent an individual from engaging in activities that involve physical exertion. It can also include mental health and environmental limitations and can include the handicapping nature of chronic pain and limitations for driving.

Background information suggests Mr. Papadakis would have the following functional limitations:

Need to avoid prolonged sitting, standing, walking, bending, balancing, climbing, lifting, carrying, kneeling, crouching or crawling. Additionally his concentration could be impaired, due to chronic pain. Too he reported he has limitations for driving. Moreover, as he has good and bad days, his reliability for showing up for work every day could be compromised. These restrictions imply that Mr. Papadakis might be best suited for light duty types of employment and working fewer than the typical 37.5-40 hour workweek.

POST-INJURY EARNING POTENTIAL

The results of this vocational evaluation suggests that Mr. Papadakis' earnings potential is entry level, or a little higher, where earnings range from \$ 6 to \$ 9 per hour. Too, it would be more reasonable to project that the number of hours he could reasonably work would range from 25 to 30 hours per week.

VOCATIONAL OR RETURN TO WORK ASSISTANCE

Mr. Papadakis could seek out the services of the state vocational rehabilitation program for retraining. However his physical limitations will limit the number and types of training he could participate in. For example, his ability for working at a computer is limited. Too, any training will take him longer than others to complete a similar training. Hence it might not be reasonable for him to pursue formal training. Rather he could seek out the services of the state vocational rehabilitation program for placement assistance.

REHABILITATION NEEDS AND COSTS

Mr. Papadakis is not medically stable, despite having undergone various treatment modalities and may have to seek out medical services the remainder of his life. The following chart has been developed to identify a conservative estimate of some of the future treatments or expenses Mr. Papadakis may require in his ongoing rehabilitation.

ITEM/SERVICE	COST	FREQUENCY	COMMENTS
Physician Visits Orthopedic/diagnostic w/testing Physiatrist Pain Management w/injections	\$ 320 \$ 55 \$ 175-600	Each appointments is scheduled to occur every 2-6 years/Life	Referrals to other specialists might be required. Newer treatments could be more costly.
Physical Therapy	\$ 40-80/visit	8-10x Year/Every 2-6 Years/Life	Maintenance for containment of symptoms
Massage Therapy	\$45/visit	Monthly, next one-two years	
Medications	\$ 650/year	Annual/Life	Newer or other more costly meds could be substituted
Y or Fitness Club	\$ 700	Annual/Life	Maintenance

SUMMARY

Paul T. Papadakis was injured in an accident at work on June 13, 2001. His injuries include back and leg pain, for which he has been treated conservatively. In addition he has undergone injections for pain management. As his condition is not likely to improve he will require monies to pay for medical treatments throughout his life. Some of these costs were identified under the section of rehabilitation needs and costs.

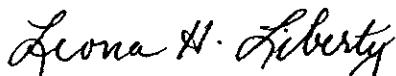
Mr. Papadakis cannot do the heavy maintenance work around his home. As a result he may have to hire others to do the tasks he would ordinarily done. A conservative estimate for this need or loss ranges from ten to twenty-five percent. A professional economist could translate this into an economic or financial cost.

Mr. Papadakis is not able to resume his long career as a railroad worker. Yet testing indicated he was well suited for his past employment and likely would have remained with the railroad until the typical retirement age customary in this occupation.

Mr. Papadakis lacks transferable skills for a new career and has functional limitations that could impede his ability to locate a suitable employer. Consequently he may have to apply to the state vocational rehabilitation program for placement assistance. His future earnings potential ranges from \$ 6-9 per hour. Too, it was opined that the number of hours he could reasonably work would range from 25 to 30 hours per week

Thank you for this referral.

Submitted:



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B2398-3409